

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL **74-1045**

B  
P/S

**United States Court of Appeals**

**For the Second Circuit**

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

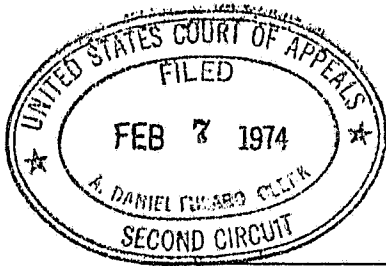
*against*

ESTYNE WEST,

*Petitioner-Appellant.*

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK  
DENYING A MOTION UNDER 28 U. S. C. 2255  
TO VACATE THE JUDGMENT OF CONVICTION  
AND ORDER A NEW TRIAL

**APPENDIX TO APPELLANT'S BRIEF**



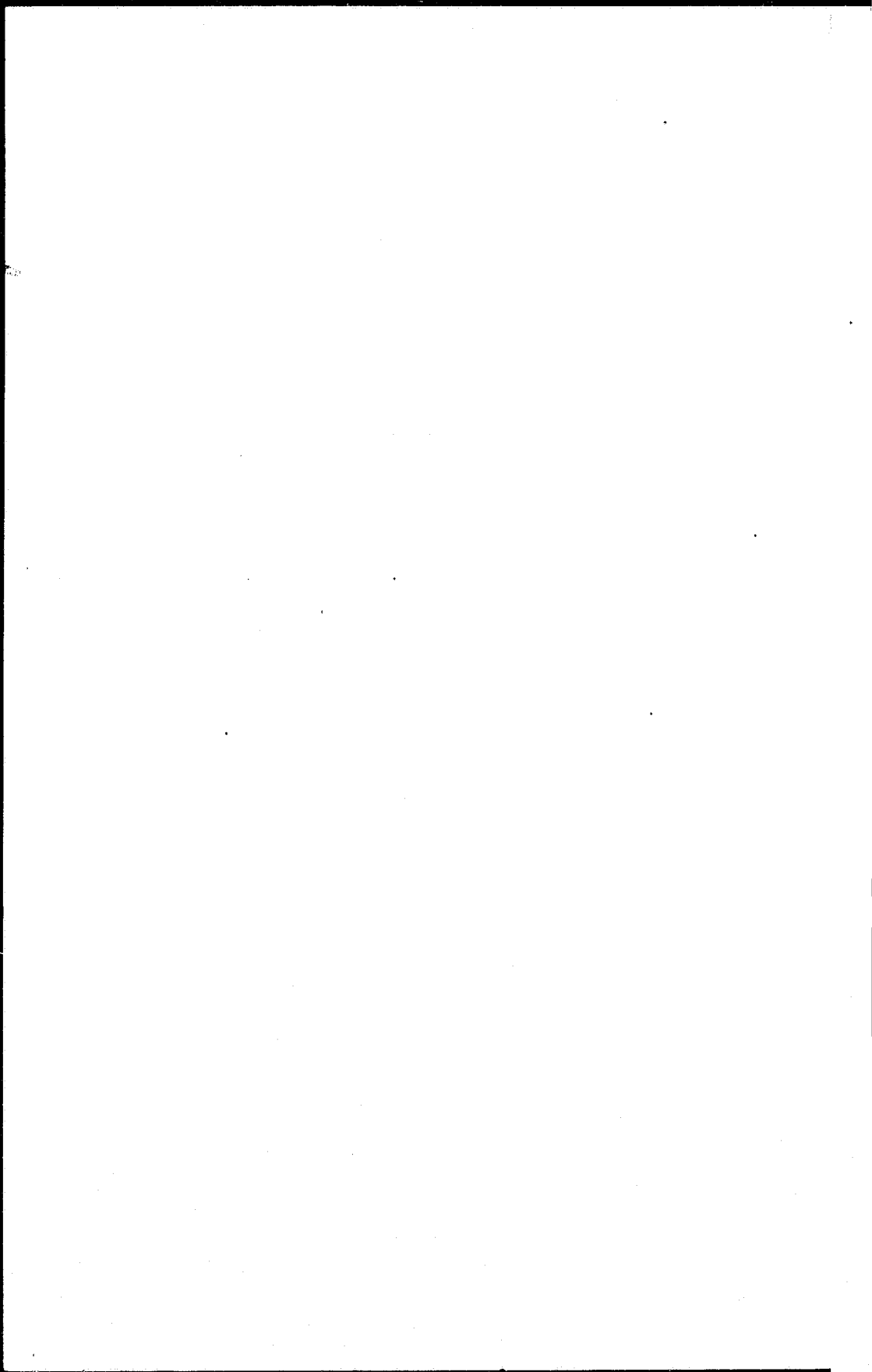
PAUL P. RAO, JR.,  
*Attorney for Petitioner-Appellant,*  
233 Broadway,  
New York, New York 10007.  
964-8866

**PAGINATION AS IN ORIGINAL COPY**

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### Docket Entries

73 Civ. 4933

- Nov 16-73 Filed Affidavit & Notice of Motion to vacate sentence purs to 28 U. S. C. 2255 re: the judgment of conviction, and that a hearing be granted for the reasons indicated.
- Dec. 5-73 Filed memo endorsed on motion filed 11-16-73 Counsel for the movant renew the attack on trial counsel's adequacy \* \* \* It suffices to say that the contention so tardily raised lacks merit. This motion is denied . . . So ordered . . . Frankel, J. Mailed notice
- Dec. 21-73 Filed notice of motion for bail pending appeal of motion under 2255 with Memo Endorsed. . . Motion denied. So ordered . . . Frankel, J. Mailed notice.
- Dec. 21-73 Filed affdvt. of L. S. Feld, AUSA in opposition to motion for bail.
- Jan. 11-74 Filed deft.-Appellant notice of appeal from order of 12-5-73 denying motion to vacate. Copy mailed to Paul J. Curran, Esq. U. S. A., SDNY. Entered on docket—1-11-74.

A True Copy

RAYMOND F. BURGHARDT, Clerk

By M. (Illegible)

Deputy Clerk

**Indictment**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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[SAME TITLE]

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The Grand Jury charges:

On or about the 7th day of March, 1972, in the Southern District of New York,

ESTYNE WEST,

the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 11.9 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a) (1) and 841(b)(1)(A).)

GEO. PETRY  
Foreman

WHITNEY NORTH SEYMOUR, JR.  
United States Attorney



## Judgment and Commitment

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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[SAME TITLE]

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On this 4th day of April, 1973 came the attorney for the government and the defendant appeared in person and by Sanford Katz, Esq.,

IT IS ADJUDGED that the defendant upon her plea of not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly possessing with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, cocaine, (Title 21, U. S. Code, Sections 812, 841(a)(1) and 841(b)(1)(A).), as charged and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year. Pursuant to the provisions of Title 21, Section 841, U. S. Code, the defendant is placed on Special Parole for a period of Three (3) Years to commence upon expiration of confinement.

*Judgment and Commitment*

Defendant released on \$10,000 bail pending appeal. Bail to be posted by April 6, 1973.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

MARVIN E. FRANKEL  
United States District Judge.

THOMAS E. ANDREWS  
Acting Clerk.

**Notice of Motion**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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[SAME TITLE]

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SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit and memorandum of law, duly sworn to on the 16th day of November, 1973, the undersigned moves this Court, before the Hon. Marvin E. Frankel, pursuant to 28 U. S. C. A., Sec. 2255, to vacate the judgment of conviction and set aside the sentence, and that a hearing be granted unless the Court determines that only issues of law are involved.

The reason for this motion is: The defendant's Fourth Amendment rights were violated so as to deny her the substance of a fair trial by the introduction of illegally obtained evidence and that this initial illegality also tainted other evidence which was the product of it.

Yours, etc.,

PAUL P. RAO, JR.,  
Attorney for Defendant,  
Office & P. O. Address,  
233 Broadway,  
New York, N. Y. 10007.

To:

HON. PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
United States Court House  
Foley Square  
New York, N. Y. 10007

**Endorsement**

Counsel for the movant renews the attack on trial counsel's "adequacy," a line also taken by present counsel's predecessor who succeeded the trial attorney. The point thought to have been so clear, however, as to make its neglect a demonstration of incompetence was not mentioned on the appeal. And yet, as shown by the affidavit of counsel who took the appeal and now urges relief under §2255, the supposed ground of relief rests exclusively upon the trial record.

It suffices to say that the contention so tardily raised lacks merit. This motion is denied.

So ordered.

Dated: New York, New York  
December 4, 1973

MARVIN E. FRANKEL  
U. S. D. J.

**Notice of Appeal**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Before:

HON. MARVIN E. FRANKEL,  
District Judge.

73 Civ. 4933

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ESTYNE WEST,

Defendant-Appellant,

*against*

UNITED STATES OF AMERICA,

Appellee.

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The Name and Address of the Defendant-Appellant:  
Estyne West, #19951, Box A, Cottage 4, Dorm. 6, Alder-  
son, W. Virginia 24910.

The Name and Address of the Attorney for Defendant-  
Appellant: Paul P. Rao, Jr., 233 Broadway, New York,  
N. Y. 10007.

Notice is hereby given that Estyne West, Defendant-  
Appellant above-named, hereby appeals to the United  
States Court of Appeals for the Second Circuit from the  
Order of Hon. Marvin E. Frankel, entered on December 5,  
1973, denying the motion pursuant to 28 U. S. C. A. Sec.

8a

*Notice of Appeal*

2255 to vacate the judgment of conviction and set aside the sentence and to order a new trial.

Dated: January 8, 1974.

PAUL P. RAO, JR.,  
Attorney for Defendant-Appellant,  
233 Broadway,  
New York, N. Y. 10007.

To:

PAUL J. CURRAN, Esq.,  
United States Attorney for the  
Southern District of New York  
Foley Square  
New York, N. Y. 10007

